

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

WALTONEN ENGINEERING, INC.,

Plaintiff,

vs.

Case No. 2014-3058-CZ

GENERAL TEST AND AUTOMATION
GROUP, CORP.,

Defendant.

OPINION AND ORDER

Plaintiff has filed a motion for leave to amend its complaint. Defendant has filed a response and requests that the motion be denied.

Facts and Procedural History

Plaintiff provides engineering services for its customers. Defendant is one of Plaintiff's customers. In its original complaint, Plaintiff alleges that it provided all of the services called for by the parties' contract(s), but that Defendant has failed/refused to pay the amounts due and owing for the services provided. As a result, Plaintiff alleges that Defendant has breached the terms of their contract(s). In the alternative, Plaintiff's original complaint contains claims for unjust enrichment (Count II) and promissory estoppel (Count III).

On December 8, 2014, Plaintiff filed its instant motion for leave to file a first amended complaint. Specifically, Plaintiff seeks to add claims related to a contract under which Defendant was allegedly to provide Plaintiff with certain build, design and installation services related to a project known as "Magna Mirrors-Mirror Turn Table Assembly Cell" ("Magna Project"). In particular, Plaintiff alleges that (1) Defendant failed to satisfy its obligations under

the Magna Project; (2) That Defendant's deficient performance has damaged Plaintiff and its relationship with Magna.

Plaintiff's proposed amended complaint contains: Count I- Breach of Contract based on the non-Magna contracts; Count II- Breach of Contract based on the Magna Project; Count III- Tortious Interference based on Defendant's alleged deficient performance under the Magna Contract and; Count IV- Unjust Enrichment. Plaintiff's proposed amended complaint does not contain Plaintiff's original promissory estoppel claim.

On December 11, 2014, Defendant filed a response to the instant motion and requests that the motion be denied. On December 15, 2014, the Court held a hearing in connection with the motion and took the matter under advisement.

Standard of Review

MCR 2.118(A)(2) provides that leave to amend a pleading shall be freely given when justice so requires. A motion to amend ordinarily should be granted, unless one of the following particularized reasons exists: (1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, and (5) futility of amendment. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 239-240; 615 NW2d 241 (2000). Delay alone does not justify denying a motion to amend, but a court may deny a motion to amend if the delay was in bad faith or if the opposing party suffered actual prejudice as a result. *Franchino v Franchino*, 263 Mich App 172, 191; 687 NW2d 620 (2004).

Arguments and Analysis

While Defendant does not challenge Plaintiff's "new" breach of contract claim, Defendant contends that the portion of Plaintiff's motion related to its proposed tortious

interference claim should be denied as the amendment would be futile and would be filed in bad faith. While a trial court should freely grant leave to amend when justice so requires, leave should be denied where amending the complaint would be futile. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face. *McNees v Cedar Springs Stamping Co*, 184 Mich App 101, 103; 457 NW2d 68 (1990).

Plaintiff's proposed tortious interference claim is based on its allegation that Defendant intentionally provided bad workmanship in order to interfere with Plaintiff's relationship with Magna. Tortious interference with a contract and tortious interference with a business relationship or expectancy are separate and distinct torts under Michigan law. *Health Call of Detroit v Atrium Home & Health Care Services, Inc.*, 268 Mich App 83, 89; 706 NW2d 843 (2005). The Court in *Health Call* summarized the elements needed to establish the torts as follows:

The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant. The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted.

Id., at 89-90 [internal citations omitted]

In its proposed amended complaint, Plaintiff alleges that (1) It had business relationships and/or expectancies with Magna, (2) That Defendant knew about Plaintiff's relationships/expectancies with Magna, (3) That Defendant intentionally interfered with Plaintiff's relationship with Magna by refusing to provide certain services and refusing to

remedy the defective condition of some equipment, and (4) That Plaintiff has suffered damage due to Defendant's actions. While the merits of Plaintiff's tortious interference with a business relationship/expectancy claim will be determined at a later stage of this case, the Court is convinced that Plaintiff has sufficiently plead its claim. Consequently, Plaintiff's motion must be granted.

Conclusion

Based upon the reasons set forth above, Plaintiff's motion for leave to file an amended complaint is GRANTED. This Opinion and Order does not resolve the last claim and does not close the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: January 7, 2015

JCF/sr

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